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Summary of Holmes v. State, 129 Nev. Adv. Op. 59

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CRIMINAL LAW & EVIDENCE

Summary

The Court determined whether the fairness of a criminal trial was compromised by the district court's admission into evidence of: (1) rap lyrics that the accused wrote while in jail; (2) a co-conspirator's out-of-court statement that the accused "went off" and "just started shooting"; and (3) unwarned statements that the accused made to Nevada detectives who interviewed him out of state.

Disposition

The Court affirmed the ruling of the district court. First, if accompanied by an appropriate limiting instruction, rap lyrics that describe details that closely mirror a crime charged, like other defendant-authored writings, are relevant and may be admissible as long as their probative value is not substantially outweighed by unfair prejudice. Second, if the record does not establish that an objection was adequately preserved, the Court must speculate to whether an error or abuse of discretion occurred and is limited to "plain error" review. When the district court does commit a plain error, the Court will not find an abuse of discretion. Third, non-custodial interrogations do not require a warning.

Factual and Procedural History

Holmes plotted to steal drugs and money from Nelson and asked Richardson to call the victim and lure him to a location. When Nelson and his friend, Clark, arrived at the location, Holmes and his co-conspirator, Reed, accosted Nelson and Clark. After one of the two men shot Nelson, Clark managed to flee and call 911. The police could not initially identify the two men, but they did recover a DNA sample near the scene. Three years later, this DNA sample matched a sample Holmes gave California parole authorities. Nevada detectives traveled to California to interview Holmes, who denied involvement. The detectives arrested Holmes and charged him with murder and robbery.

At trial, the district court admitted three statements into evidence: (1) rap lyrics that Holmes wrote while in California, (2) an out-of-court statement made by Reed to Richardson that Holmes "went off" and "just started shooting," and (3) unwarned statements made by Holmes to the Nevada detectives in California. Holmes was subsequently found guilty of robbery and first-degree murder, both with the use of a deadly weapon. Holmes appealed.

¹ By Brian Vasek.

² See NEV. REV. STAT. § 48.015 (2011).

³ See NEV. REV. STAT. § 48.025(1) (2011).

Discussion

A. Holmes's Rap Lyrics

Holmes' first claim of evidentiary error focuses on the admission of the rap lyrics. The district court had determined that the lyrics were both relevant² and presumptively admissible³ because they tended to prove Holmes' involvement in the charged robbery and the "probative value" of the lyrics was not "substantially outweighed by the danger of unfair prejudice."⁴ The court had also provided a limiting instruction that jurors could "consider if the above lyrics are confessions, admissions, o[r] neither," and that they could not use the lyrics as evidence of bad character or criminal propensity.

The Supreme Court determined that the rap lyrics described details that mirrored the crime charged. After comparing the facts to similar cases in other jurisdictions,⁵ the Court held that while defendant-authored fictional accounts offered to show propensity for violence would likely be excluded, when the defendant-authored writings incorporate details of the crime charged, the accounts may be admissible. Therefore, it was not unreasonable for the district court to admit the rap lyrics. The lyrics were relevant because so long as evidence has "any tendency to make the existence of the fact that is of consequence to the determination of the action more or less probable than it would be without the evidence," it is "relevant."⁶ Here, the similarities between the lyrics and the facts of the charged robbery met the threshold test of relevance.

Furthermore, even if the lyrics were prejudicial, the district court did not abuse its discretion in determining that the risk they carried of unfair prejudice did not substantially outweigh their probative value. Only a single stanza of the lyrics was admitted against Holmes, and the district court crafted and gave an appropriate limiting instruction. So, if the jurors followed the instructions, as the Court presumes they did,⁷ the jurors only considered the lyrics if they found them autobiographical and they would not have allowed their feelings about rap music to influence their verdict.

B. Reed's Out-of-Court Statement to Richardson

Holmes' second claim of evidentiary error focuses on Richardson's testimony that Reed told Richardson after the crime that Holmes "went off" and "just started shooting." Holmes argued that this did not qualify as a non-hearsay statement by a coconspirator because Reed did not make the statement to Richardson "during the course and in furtherance of the conspiracy."⁸ The Court rejected this claim for two reasons.

First, the record does not establish that the error was adequately preserved. The record only shows that Holmes objected to the statement. It does not set forth the specific

² See NEV. REV. STAT. § 48.015 (2011).

³ See NEV. REV. STAT. § 48.025(1) (2011).

⁴ NEV. REV. STAT. § 48.035(1) (2011).

⁵ *Daniels v. Lewis*, No. C 10-04032 JSW, 2013 WL 183968 (N.D. Cal. Jan. 17, 2013); *United States v. Stuckey*, 253 F. App'x 468 (6th Cir. 2007).

⁶ NEV. REV. STAT. § 48.015 (2011).

⁷ *Lisle v. State*, 113 Nev. 540, 558, 937 P.2d 473, 484 (1997).

⁸ NEV. REV. STAT. § 51.035(3)(e) (2011).

grounds for objection. Thus, the Court lacked a satisfactory basis for assessing prejudicial error and its review was limited to “plain error.”⁹

Second, the record does not establish an abuse of discretion by the district court. Under NRS 51.035(3)(e), “the duration of a conspiracy is not limited to the commission of the principal crime, but extends to affirmative acts of concealment.” Richardson’s conversation with Reed occurred less than two hours after the murder and robbery. With no record discussion of the “during the course and in furtherance of the conspiracy” requirements of NRS 51.035(3)(e), it is not possible to say whether the conversation was to “keep conspirators abreast of ongoing activities [or] avoid detection” (admissible) or “mere conversations or narrative declarations of past events” (inadmissible). Assuming objection, argument, perhaps an offer of proof, a ruling could legitimately have gone either way. Accordingly, the Court did not find an abuse of discretion amounting to plain error.

III. Holmes’s Statement to Nevada Detective in California

Lastly, Holmes argued that the district court should have suppressed the unwarned statement he made to the Nevada detectives who interviewed him in California. However, the interrogation was not custodial, and thus did not require a warning.

Dissent

Justice Saitta believed that the district court abused its discretion in admitting the lyrics. The lyrics were not sufficiently probative as the crimes depicted in the lyrics were dissimilar from the crime charged. The lyrics did not reflect knowledge of the specific event any more than they describe routine criminal behavior. Moreover, the scant probative value of the lyrics was far outweighed by the danger of the unfair prejudice that they presented. Admitting the lyrics was an error, and the error was not harmless. The conviction should have been reversed and the case remanded for a new trial.

Conclusion

The district court did not abuse its discretion in admitting the rap lyrics, the statement of the co-conspirator, or the unwarned statement.

⁹ United States v. Burton, 126 F.3d 666, 673-74 (5th Cir. 1997).